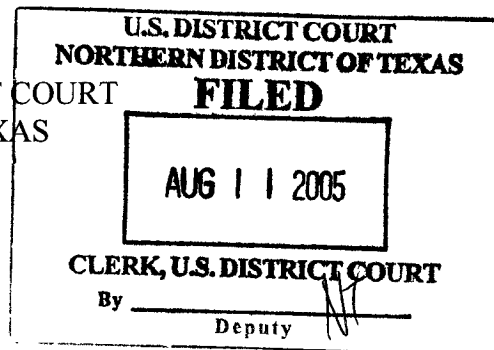


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



PREMIER DEVELOPMENT AND
INVESTMENT, INC.,

Plaintiff,

v.

EQUITILINK, L.L.C., et al.,

Defendants.

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Civil Action No. 3:04-CV-0405-L

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AND BRIEF IN
SUPPORT**

TO THE HONORABLE SAM A. LINDSAY, U.S. DISTRICT JUDGE:

Plaintiff asks the Court to render default judgment against Defendants.

A. Introduction

1. Plaintiff is Premier Development and Investment, Inc.; Defendants are Equitilink, L.L.C., James J. Mahoney, Thomas M. Mahoney, and Shamrock Holdings.
2. On January 22, 2004, Plaintiff sued Defendants for breach of contract.
3. On April 6, 2005, the Court ordered the case administratively closed pursuant to a letter from the mediator, Jerome S. Levy, informing the Court that this action had settled.
4. On May 5, 2005, the Court granted Defendants' Motion to Withdraw as Counsel. Further, the Court ordered Defendants to retain counsel and cause counsel to enter a written appearance with the Clerk of the Court no later than June 6, 2005.
5. Defendants have not retained counsel as ordered by the Court.

6. On May 20, 2005, Plaintiff filed its Motion to Reopen and Brief in Support on the grounds that the mediation was unsuccessful. Although the mediation resulted in a Memorandum of Compromise and Settlement, the Defendants failed to comply with its terms rendering the settlement of no further force or effect.

7. Defendants did not file a response to Plaintiff's Motion to Reopen and Brief in Support.

8. On June 22, 2005, the Court granted Plaintiff's Motion to Reopen.

9. On July 28, 2005, the Court struck Defendants' Original Answer filed on February 20, 2004 and held Defendants in default. Further, the Court ordered Plaintiff to move for default judgment no later than August 12, 2005.

B. Argument

10. The Court may render a default judgment against a party who has not filed a responsive pleading or otherwise defended the suit. *See* Fed. R. Civ. P. 55.

11. The Court should render a default judgment against Defendants because Defendants did not retain counsel as ordered by the Court.

12. Plaintiff suffered economic damages in the amount of \$810,000.00 according to Plaintiff's Expert's Report (*See* Appendix A, pages 10 and 11) and Plaintiff's President's affidavit. *See* Appendix B, pages 27 and 28. If the amount of the judgment can be reliably computed from the record, a default judgment can be entered without a hearing. *James v. Frame*, 6 F.3d 307, 310 (5th Cir.1993); *Action v. Marc Rich & Co.*, 951 F.2d 504, 508-09 (2d Cir.1991); *HMG Prop. Investors, Inc. v Parque Indus. Rio Canas, Inc.*, 847 F.2d 908, 919 (1st Cir.1988).

13. Plaintiff incurred reasonable attorney fees in the amount of \$50,000.00 and attaches the Affidavit of Andrew L. Jones. *See* Appendix C, pages 29 and 30.

14. Plaintiff attaches a Military Affidavit pursuant to 50 U.S.C. app. §521(b)(1). *See* Appendix D, page 31.

C. Conclusion

15. For these reasons, Plaintiff asks the Court to grant its motion for default judgment and award \$810,000.00 economic damages, reasonable attorney fees in the amount of \$50,000.00, interest, and costs to Plaintiff.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. L. Jones', with a long horizontal stroke extending to the right.

By: _____

Andrew L. Jones

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Texas Bar No. 24012919

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Dallas, Texas 75360

Tel. (214) 979-0100

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**ATTORNEY FOR PLAINTIFF
PREMIER DEVELOPMENT AND
INVESTMENT, INC.**

CERTIFICATE OF SERVICE

I certify that I mailed a copy of Plaintiff's Motion for Default Judgment and Brief in Support by U.S. Mail to Equitilink, L.L.C., James J. Mahoney, Thomas M. Mahoney and Shamrock Holdings, Defendants, and whose address is 4275 Executive Square, Suite 210, La Jolla, California, 92037 on August 11, 2005.

A handwritten signature in black ink, appearing to be 'J. Mahoney', written over a horizontal line.

CERTIFICATE OF CONFERENCE

I certify that I attempted to confer with James J. Mahoney and Thomas M. Mahoney by telephone on August 10, 2005 at 11:17 a.m. and August 10, 2005 at 5:38 p.m., but Defendants have not responded to my attempts. Accordingly, I cannot represent to the Court whether Defendants oppose or do not oppose Plaintiff's Motion for Default Judgment and Brief in Support.

A handwritten signature in black ink, appearing to be 'J. Mahoney', written over a horizontal line.